

REMARKS

Claims 1, 3-5, 7-10, 12-46 and 48-114 are pending in the present application. In the forgoing amendments, claim 91 has been amended. Support for these amendments can be found in the specification and claims of the application as filed. No new matter has been added by these amendments.

Applicants respectfully request entry of the foregoing amendments and reconsideration of the application in light of the amendments above and the remarks below.

Claim Rejections under 35 U.S.C. § 103(a)

The Office Action rejected claims 91-98 under 35 U.S.C. §103(a) as being unpatentable over Sundelin et al. (U.S. Patent No. 6,144,861), hereinafter referred to as Sundelin, in view of Bremer et al. (U.S. Patent No. 6,647,058), hereinafter referred to as Bremer. Applicants respectfully traverse the rejection.

In FIG. 4 of Sundelin as cited by the Examiner in the Office Action, mobile station (MS) generates a signal-to-noise ratio (SIR) in SIR unit **92**. A difference is determined between an SIR reference value and the detected SIR value in SIR unit **92** by differencer **94**, which is then used to generate a TPC bit by transmit power controller **88** (see Sundelin, col. 7, lines 46-54). Sundelin, however, does not teach or suggest modifying a quality metric (e.g., SIR) by a transmit power margin at MS, as recited in independent claim 91. Bremer also fails to teach or suggest such.

Sundelin or Bremer, alone or in combination, further fails to teach or suggest determining a maximum rate of wireless transmitting data in accordance with the modified quality metric, as recited in claim 91.

For at least the reasons stated above, Applicants submit that independent claim 91 is patentable over the cited references. Applicants respectfully request that the rejection of claim 91 be withdrawn.

Claims 92-98 each depend from independent claims 91, and are therefore allowable as well. Applicants respectfully request that the rejections of these claims be withdrawn.

Allowable Subject Matter

The Office Action objected to claim 99 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In view of claim 99 dependent from independent claim 91, it is also allowable for at least the reasons that claim 91 is allowable, as stated above.

Applicants thank the Examiner for allowing claims 1, 3-5, 7-10, 12-26, 46, 48-71 and 109-114, and for indicating claim 99 would be allowable if rewritten in independent form.

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicants submit that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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